Court No.2

Civil Writ Petition No.789 (M/S) of 2002.

Daud Hussain …….. Petitioner.

Versus

Civil Judge (Sr. Division),Roorkee,
District Hardwar and two others. …… Respondents.

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Hon'ble P.C. Verma, J.

This writ petition has been filed by the petitioner challenging the order dated 06.09.2002 passed by the Additional District Judge, Roorkee (District Hardwar) in Civil Appeal No.13 of 2000, rejecting the application of the petitioner-appellant under Order 41 Rule 27 of the Code of Civil Procedure.

The application seeking permission to file certified copies of the assessment registers as additional evidence on the ground the earlier his counsel, who conducted the case in the trial court, did not advise the same. The trial court has recorded a finding that the plaintiff could not establish that evidence was not within his knowledge or after the exercise of due diligence could not be produced by him at the time when the decree appealed against was passed. The learned counsel for the petitioner derived strength from **Clause (b) of Rule 27 of Order 41 of the C.P.C.** which reads as under:-

> "the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause,"

From the perusal of the aforesaid Clause, it is abundantly clear that the Clause empowers the Court that it may require any document to be produced or any witness to be examined to enable it to pronounce the judgment, or for any other substantial cause.

Learned counsel for the petitioner submits that though it is the power vested with the Court requiring additional evidence to be adduced, the said power can be exercised when the application is on record and the document is of such a nature which may enable the Court to pronounce the judgment, the Court may accept that additional document.

The trial court has not gone on this aspect of the matter for the reason that this argument was not advanced before the appellate court as it appears from the judgment. However, learned counsel for the petitioner admitted that the defendant/respondent No.3 himself has filed the sale deed of the property purchased by him over which he can only claim the possession and not over the land held by the petitioner. The dispute of the title between the parties can be decided on the basis of that sale deed itself. Therefore, copies of the assessment registers were not the sole documents, which only could enable the appellate authority to pronounce the judgment. There was no occasion for the trial Court to have required these documents to be filed as additional evidence.

For the reasons recorded above, I do not find any infirmity in the order impugned. The writ petition is devoid of merits and is hereby dismissed.

(P.C. Verma, J.)

21.10.2002
P.Singh